

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-212608.2

DATE: November 14, 1983

MATTER OF: Moloney Coachbuilders--Request for
Reconsideration

DIGEST:

Where protester's initial submission indicates protest involves matters which GAO does not consider, GAO, pursuant to 4 C.F.R. § 21.3(g), will dismiss the protest without requesting an agency report.

Moloney Coachbuilders (Moloney) requests reconsideration of our prior decision, Moloney Coachbuilders, B-212608, August 25, 1983, 83-2 CPD 255, in which we dismissed the firm's protest against the award of a contract to Hess & Eisenhardt Co. (Hess) under solicitation No. 0000-230039 issued by the Department of State. In our decision, we stated that the submission of a below-cost bid does not constitute a legal basis for precluding or disturbing a contract award and that our Office does not consider allegations of possible antitrust violations.

Moloney states that our decision was reached without complying with our Bid Protest Procedures, 4 C.F.R. part 21, et seq. (1983), which provide that we request a report from the agency and afford the protester an opportunity to comment on the report.

While Moloney correctly points out that our Bid Protest Procedures generally provide that, pursuant to a protest, our Office will obtain a report from the contracting agency and afford the protester the opportunity of rebuttal, they also provide that we will dismiss a protest without following this procedure when on its face a protest is clearly without merit or is not reviewable by GAO. 4 C.F.R. § 21.3, as amended, January 17, 1983, 48 Fed. Reg. 1931 (1983).

We again dismiss the protest pursuant to section 21.3(g) since the protest shows on its face that one basis concerns a matter under the conclusive jurisdiction of another agency and the other basis is not for consideration by our Office in the circumstances alleged. Barrier Industries, Inc., B-210050, January 6, 1983, 83-1 CPD 11. Moloney also states

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that its protest is based on the contracting officer's alleged failure to verify Hess' costs which Moloney believes could be a violation of the regulations concerning a bidder's responsibility. This basis of protest is also dismissed pursuant to section 21.3(g)(4) since it involves an affirmative determination of responsibility which we do not review in the absence of circumstances not alleged here.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel